Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL W. GILPATRICK
and
CHARLES E. WILLBANKS

Appeal No. 2003-2168
Application No. 09/996,010

ON BRIEF

Before WARREN, DELMENDO, and PAWLIKOWSKI, Administrative Patent Judges.

DELMENDO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 (2003) from the examiner's final rejection of claims 1 through 16 (final Office action mailed Dec. 4, 2002, paper 7) in the above-identified application.[1] Claims 17 through 36, which are

[1] In reply to the final Office action, the appellants submitted a 37 CFR § 1.116 (2003)(effective Feb. 5, 2001) amendment on Feb. 11, 2003, proposing a change to claim 1. The examiner indicated in an advisory action mailed on Mr. 3, 2003

the only other pending claims, stand withdrawn from further consideration pursuant to 37 CFR § 1.142(b) (2003)(effective Dec. 22, 1959).

The subject matter on appeal relates to a strong lightweight airbag cushion for deployment in opposing relation to a vehicle occupant during a collision event. Further details of this appealed subject matter are recited in representative claim 1 reproduced below:

> 1. A strong lightweight airbag cushion for deployment in opposing relation to a vehicle occupant during a collision event, the cushion comprising: a body of wound yarn including an interior, a face portion for contact with the vehicle occupant and a rear portion including an inlet port for the introduction of an inflation medium into the body, wherein the body comprises windings of yarn such that the yarn is spread substantially evenly across said face portion of said body and such that the yarn is disposed preferentially across the back of said body in the area surrounding the inlet port so as to form a localized region of enhanced thickness around the inlet port.

The examiner relies on the following prior art references as evidence of unpatentability:

Onoe et al. JP 4-2538 Jan. 07, 1992
(Published JP application)

Yoshida et al. JP 4-15142 Jan. 20, 1992
(Published JP application)

(paper 10) that the amendment will be entered for purposes of this appeal.

Yoshida et al. JP 4-46840 Feb. 17, 1992
(Published JP application)

Claims 1 through 7, 9, and 11 through 15 on appeal stand rejected under 35 U.S.C. § 102(b) (2003) as anticipated by JP 4-15142. (Examiner's answer mailed Jul. 1, 2003, paper 12, page 3; final Office action, page 3.) In a similar fashion, claims 1 through 9 and 11 through 16 on appeal stand rejected under 35 U.S.C. § 102(b) as anticipated by JP 4-2538. (Answer, page 3; final Office action, page 3.) Additionally, claims 1 through 3, 5, 9 through 11, and 13 on appeal stand rejected under 35 U.S.C. § 102(b) as anticipated by JP 4-46840. (Answer, page 3; final Office action, page 4.)[2]

We affirm all three rejections for essentially those reasons set forth in the answer and the final Office action.[3]

The appellants do not dispute the examiner's determination that each of the applied prior art references describes each and

[2] The examiner states in the advisory action that the rejection under 35 U.S.C. § 112, ¶2 (2003) of appealed claims 1-8 has been withdrawn.

[3] The appellants submit that claims 9-16 should be considered separately from claims 1-8. (Appeal brief filed Apr. 1, 2002, paper 11, p. 3.) We note, however, that the appellants do not explain in the "ARGUMENT" section of their brief why these two groups of claims are separately patentable. Under these circumstances, we hold that all the claims under each ground of rejection stand or fall together and confine our discussion to claim 1. 37 CFR § 1.192(c)(7) (2003)(effective Apr. 21, 1995).

every limitation of the invention recited in appealed claim 1. Rather, the appellants' only argument on appeal is that the applied prior art references are nonenabling. (Appeal brief, pages 3-6.) We cannot agree.

The burden of proving that an anticipating reference is nonenabling rests on the applicants. In re Sasse, 629 F.2d 675, 681, 207 USPQ 107, 111 (CCPA 1980).

In this case, the appellants have not shouldered, much less carried their burden of proving nonenablement. Other than generalities or unsupported allegations, the appellants proffer no objective evidence (e.g., declaration evidence establishing that one of ordinary skill in the art would have been subjected to undue experimentation) to substantiate their position. For example, in attacking JP 4-46840 (appeal brief, pages 4-5), the appellants point out that the reference teaches winding a tape around an elliptical mandrel at a winding angle of 14.5° but that the term "winding ang[le]" is not defined. The appellants then urge that the "only logical conclusion is that the angle is formed between the equatorial plane of the bag and the direction of the tape being wound thereon" and that "[w]inding tape around a mandrel in this manner produces a thick nodule in the center of the face thereof, and does not spread the tape evenly over the face." (Id. at page 5.) A similar type of argument,

unsubstantiated by objective evidence, is also made against JP 4-15142 and 4-2538. (Id. at pages 5-6.) It has long been held, however, that mere lawyer's arguments and conclusory statements, which are unsupported by factual evidence, are entitled to little probative value. In re Geisler, 116 F.3d 1465, 1470, 43 USPQ2d 1362, 1365 (Fed. Cir. 1997); In re De Blauwe, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984); In re Wood, 582 F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978); In re Lindner, 457 F.2d 506, 508-09, 173 USPQ 356, 358 (CCPA 1972).

Because the appellants have not successfully rebutted the prima facie case of anticipation established by each of the applied prior art references, we affirm the examiner's rejections under 35 U.S.C. § 102(b) of: (i) appealed claims 1 through 7, 9, and 11 through 15 as anticipated by JP 4-15142; (ii) appealed claims 1 through 9 and 11 through 16 as anticipated by JP 4-2538; and (iii) appealed claims 1 through 3, 5, 9 through 11, and 13 as anticipated by JP 4-46840.

The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

Charles F. Warren Administrative Patent Judge	)	
Romulo H. Delmendo Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
Beverly A. Pawlikowski Administrative Patent Judge	)	

rhd/

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